Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1963

No. 472

VESSEL JUDITH LEE ROSE, INC.,
PETITIONER,

DOROTHY M. CHERMESINO, ADMINISTRATRIX,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above cause on June 19, 1963.

Judgment and Opinions of the Courts Below

The opinion and final decree of the United States District Court for the District of Massachusetts are not yet reported but are set forth in the certified copy of the record filed herewith.

The opinion and judgment of the United States Court of Appeals affirming the said judgment of the District Court were filed on June 19, 1963, and are not yet reported but are set forth in the certified copy of the record filed herewith.

Jurisdiction

The judgment of the Court of Appeals was entered on June 19, 1963 (R. p. 17) and the jurisdiction of the Court is invoked under U.S.C. Chapter 46, Section 761.

Questions Presented

1. Is the Death on the High Seas Act which gives a right of action where death is caused by a "wrongful act, neglect or default" broad enough to encompass an action for death caused by the latent defect of an appliance of the vessel?

2. Is the obligation of the vessel-owner to furnish a seaworthy vessel "absolute" or 100% or do the facts of the individual case warrant an exception?

3. Do the words "wrongful act, neglect or default", as appear in the Death on the High Seas Act, encompass the situation where it was impossible for the vessel owner, after exercising the highest degree of care, to discover the defect in a shackle, which defect became the cause of the death of a seaman?

Statutes Involved

46 U.S.C. 761—Death on the High Seas Act:

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the

high seas beyond a marine league from the shore of any State . . . the personal representative of the decendent may maintain a suit for damages in the district courts of the United States, in admiralty . . . against the vessel, person, or corporation which would have been liable if death had not ensued."

Statement

On December 8, 1961, Angelo J. Chermesino, the mate on the fishing vessel Judith Lee Rose, was killed when a part of the rigging fell on him because an iron shackle pin had broken and released the shackle and gear. The vessel was fishing on the western side of the Grand Banks, more than a marine league from shore. At the time of the accident the weather was mild, the sea smooth and the wind northerly, about five miles per hour. The vessel was stopped and the crew was hauling in a load of fish, about 3500 pounds, in the customary manner. As the net was being hauled in, several members of the crew heard a noise in the rigging and immediately the net, stay and gear fell to the deck on the decedent.

The shackle had a safe working load of 11,200 pounds and a safety factor of about three times that amount, but an inspection after the accident disclosed that the pin was defective. The defect was latent and could not have been visually detected. The shackle had been installed three or four years before the accident and was inspected, along with the rest of the rigging, twice annually. The last inspection took place in August 1961.

The vessel first went to sea in 1954 and the deceased had been one of the original stockholders of the appellant corporation. He owned 1/16th of the outstanding shares of the corporation and, at the time of his death, was one of

the five directors and had been elected a few months prior to his death.

Although the care and inspection of the rigging was the responsibility of the owner, as mate, the job of the deceased was to look after the equipment and replace, where needed, all worn or defective appliances.

The last inspection before the accident was not performed by the deceased.

The administratrix of the deceased, his widow, brought this action under the Death on the High Seas Act.

The above statement is set forth in greater detail in the Trial Court's Opinion (R. p. 7)

Reasons for Granting the Writ

The petitioner feels that even though the trend of the courts is to give greater protection to the seaman, the protection should not be so extreme so as to deprive the vessel owner of any protection whatsoever. Since the Death on the High Seas Act is a statute, petitioner feels that the interpretation thereof should not only be liberal so as to give the required protection to the seaman, but that it should be as literal as possible.

It seems to follow logically that if a seaman can recover for a personal injury to himself arising out of the unseaworthiness of a vessel, then there should be recovery for the ultimate of personal injury—the death of a seaman, arising out of the same type of cause. If the seaman had lived, then under *Seas Shipping Co., Inc. v. Sieracki*, 328 U.S. 85 (1946), the seaman would have recovered even though the injury was caused by a latent defect; and logically, it would seem that if the seaman is killed by the same cause, recovery should be had by the personal representative of the deceased; and again, logically, it would seem that since the common law did not take care of the death

caused in the manner above described, then certainly the statute should take care of it. However, the petitioner contends that since the Death on the High Seas Act is a statute, then a reasonably literal approach should be taken by the courts.

Certainly a statute should give protection to all parties involved, not only the seaman, but to the seaman's employer. And since the trend of the courts is humanistic rather than legalistic, then the vessel owner is entitled to humanistic consideration. But, since the vessel owner's humanistic interests are economic rather than personal such as is that of the seaman, then the petitioner contends, that unless the courts can give some protection to the business venture of the vessel owner, then eventually there will be no business in which the seaman can participate. In this case the vessel owner has done everything humanly possible within his knowledge and ability to forestall any injuries to seamen.

Therefore, how can a vessel be declared unseaworthy when a shackle had been in use for a long period of time and periodic visual inspections disclosed absolutely nothing wrong with the shackle. Certainly just prior to the breaking of the shackle the vessel was not unseaworthy because of a defective shackle. At this point certainly no one knew of any defective condition.

Did the vessel suddenly become unseaworthy when the shackle broke, when a second before the breaking the vessel was seaworthy? The petitioner feels that if the vessel becomes unseaworthy so as to give rise to litigation, then any vessel, from the very moment the vessel leaves a dock, is unseaworthy because no one knows at what time any piece of the vessel's equipment will break because of a latent defect. It is for this reason that the petitioner contends that the facts of the present case are not encompassed in *McLaughlin v. Bluthenthal Rothschild Co., Inc.*, 167 F. Supp.

714, S.D.N.Y. 1958, *State of Maryland* v. *Wimberhauser S.S. Co.*, 176 F. Supp. 664 (D. Md. 1959) and especially the case of *The Tungus* v. *Skovgaard*, 358 U.S. 588 (1959), all of which cases interpreted "wrongful act, neglect or default" so as to encompass the word "unseaworthiness".

It is said that a liberal construction of the statute will abolish a harsh and technical rule of the common law against the seaman; but what will it do against the vessel owner who has no manner of means to control the condition of a vessel which arose in the case at bar.

Petitioner feels that a review by this court is warranted and that the trend of the interpretation of the rights of seamen should be considered in the light of rights of vessel owners.

Conclusion

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Solomon Sandler
63 Roger Street
Gloucester, Massachusetts
Attorney for Petitioner

Appendix

United States Court of Appeals
For the First Circuit

No. 6704.

VESSEL JUDITH LEE ROSE, INC.,
RESPONDENT, APPELLANT,

v.

DOROTHY M. CHERMESINO, ADMINISTRATRIX,
LIBELANT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS.

Before WOODBURY, *Chief Judge*, and HARTIGAN and ALDRICH, *Circuit Judges*.

Solomon Sandler for appellant.
Melvin I. Bernstein, with whom *Miles J. Schlichte* was on brief, for appellee.

OPINION OF THE COURT.

June 19, 1963.

PER CURIAM. We quite agree with the result reached by the court below in this case.

Judgment will be entered affirming the judgment of the District Court.